SUPREME COURT U. S.

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IN THE

Supreme Court of the United States

October Term, [redacted] 1969

No. [redacted] 195

LAWRENCE D. SULLIVAN,

Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

THOMAS J. CARLEY
Attorney for Petitioner
No. 159 Princeton Road
Rockville Centre, New York 11570
212—LE 5-4195

GABRIEL T. PAP
of Counsel

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above entitled matter on the 6th day of March, 1969.

I. Opinion Below

The United States Court of Appeals for the Second Circuit affirmed the decision of the Tax Court of the United States without opinion (Appendix 1a).

The Memorandum Findings of Fact and Opinion upon remand of the Tax Court of the United States is reported at T. C. Memo. 1968-144 (Appendix 2a).

The reversing and remanding opinion of the United States Court of Appeals for the Second Circuit is reported at 368 F. 2d 1007 (CA 2, 1966) (Appendix 9a).

The original Findings of Fact and Opinion of the Tax Court of the United States is reported at 45 T.C. 217 (Appendix 13a).

II. Statement of Jurisdiction

The judgment of the Court of Appeals was made and entered on March 6, 1969 (Appendix 1a).

There was no order respecting a rehearing nor granting extension of time within which to petition for certiorari.

The jurisdiction of this Court is conferred by Sec. 7482(a) of the Internal Revenue Code of 1954, and 28 U.S.C. Sec. 1254(1).

The jurisdiction of the Court of Appeals is found in the Internal Revenue Code of 1954 Sec. 7482(a) and 28 U.S.C. Sec. 1254(1).

The jurisdiction of the Tax Court of the United States is found in the Internal Revenue Code of 1954, Sec. 7442.

III. Question Presented for Review

Are the automobile transportation expenses of a worker who must carry tools to be apportioned between the person of the worker and his tools, in order to find his taxable income?

IV. Statutes Involved

INTERNAL REVENUE CODE OF 1954

Sec. 162(a):

> "There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year carrying on any trade or business."

"Sec. 262.

PERSONAL, LIVING AND FAMILY EXPENSES. Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses."

INCOME TAX REGULATIONS

"§ 1.162-1. Business expenses. (a) In general. * * * Among the items included in business expenses are * * * operating expenses of automobiles used in the trade or business, * * *."

REVENUE RULING 63-100 (Cum. Bull. 1963-1, 34):

"Where it is necessary for a musician to use his automobile to transport his musical instruments between his residence and his place of work because they are too bulky to be carried otherwise, and he would not use his automobile on such trips except for that reason, his transportation expenses are deductible under section 162 of the Internal Revenue Code of 1954.

Such transportation expenses are ordinary and necessary expenses paid or incurred in carrying on his trade or business because they are occasioned primarily by the necessity for transporting bulky musical instruments even if such expenses would otherwise be nondeductible commuting expenses.

Whether transportation expenses are incurred primarily for business or personal reasons is a question of fact to be determined in each case.

Revenue Ruling 56-25, C.B. 1956-1, 152, states that expenses incurred by an employee in using his automobile for commuting between his place of abode and his principal or regular place of work represent nondeductible personal expenses notwithstanding the fact that the automobile is also used to transport tools used by the employee in his work. That ruling is hereby modified to remove the implication that such transportation expenses would not be deductible even if the employee would not have used his automobile on such trips but for the necessity of taking his tools with him."